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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EDWIN MYERS,

Appellant,

vs.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 390

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$25.00 civil penalty for an alleged open-burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 16th day of November, 1973, at Spokane, Washington; and appellant Edwin Myers appearing pro se and respondent Spokane County Air Pollution Control Authority appearing through its director, Fred A. Shiosaki; and Board member present at the hearing being Walt Woodward; and the Board having considered the transcript, exhibits, records and files herein and having entered on the 18th day of December, 1973, its proposed

1 Findings of Fact, Conclusions of Law and Order; and the Board having
2 served said proposed Findings, Conclusions and Order upon all parties
3 herein by certified mail, return receipt requested and twenty days
4 having elapsed from said service; and


5 The Board having received exceptions to said proposed Findings,
6 Conclusions and Order from Edwin Myers and having considered and denied
7 same; and the Board being fully advised in the premises; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 18th day of
10 December, 1973, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 21st day of February, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 WALT WOODWARD, Chairman

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18 W. A. GISSBERG, Member
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21 MARY ELLEN McCAFFREE, Member
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FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$25.00 civil penalty for an alleged open-burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at a hearing in the Public Works Building, Spokane, Washington, at 1:30 p.m., November 16, 1973.

Appellant appeared pro se. Respondent was represented by Fred A. Shiosaki, its director. Ozzie Miller, Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard, exhibits examined and transcript reviewed,
2 the Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 On property being purchased by appellant at West 1611 Main Avenue,
6 Spokane, Spokane County, a fire of household garden waste was burned
7 under appellant's supervision on May 13, 1973, a day approved by
8 respondent for that type of open-burning. Water from a garden hose
9 was poured on it in an attempt to extinguish it at nightfall.

10 II.

11 On May 16 and 17, 1973, which were non-burning days as proclaimed
12 by respondent, unattended open fires of garden waste and lumber
13 burned on the above described property. An inspector on respondent's
14 staff noted these fires and poured water from a garden hose on them
15 in attempts to extinguish them. On the basis of his report, respondent
16 served on appellant a Notice of Violation, citing Section 6.01 of
17 respondent's Regulation I and levying a civil penalty of \$25.00.
18 That penalty is the subject of this appeal.

19 III.

20 Section 6.01 of respondent's Regulation I makes it unlawful to
21 cause or allow an open fire except for conditions specified in Section
22 6.01(5).

23 IV.

24 Appellant, who does not reside at the instant site, did not visit
25 the site during the week after May 13, 1973.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 V.

2 The weather was dry and windy in Spokane during the week of
3 May 13, 1973.

4 From these findings, the Pollution Control Hearings Board comes
5 to these

6 CONCLUSIONS OF LAW

7 I.

8 The cause of the open fires which burned on appellant's property
9 on May 16 and 17, 1973, is not known. The presumption is that they
10 were ignited in a nearby stack of lumber from the fire on May 13, 1973.
11 At any event, fires were "allowed" to burn on appellant's property on
12 days not authorized by respondent. Appellant did not revisit his
13 property that week although weather conditions were conducive to
14 rekindling of the fire on May 13, 1973. Appellant was in violation of
15 Section 6.01 of respondent's Regulation I.

16 II.

17 The \$25.00 penalty, although one-fifth of the maximum allowable
18 amount for a violation of Regulation I, may be excessive in view of
19 the circumstances.

20 Therefore, the Pollution Control Hearings Board issues this

21 ORDER

22 The appeal is denied, but the \$25.00 civil penalty is remanded to
23 respondent for the immediate collection of \$12.50, the balance of
24 \$12.50 to be suspended pending no similar violations by appellant for
25 a period of six months from the date this Order becomes final.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington, this 18th day of December, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 Mary Ellen McCaffrey
8 MARY ELLEN McCAFFREY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER